ILLINOIS' EXPERIENCE WITH MINIMUM WAGE LEGISLATION

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In 1933, Illinois, along with a number of other states, passed a minimum wage law for women and minors. The law resulted from a desire to ameliorate the situation of these depressed groups of workers and from the growing belief that a more widely distributed purchasing power was necessary as a recovery measure. After a period of ten years, a critical examination of the administration and enforcement of this law, and of the changes in the wage and hour structure of the industries affected by the law, may be desirable, and may contribute to an improvement of minimum wage legislation. The purpose of this study is to indicate (1) whether the aims of the Illinois minimum wage law have been achieved in practice, (2) whether the conditions of the labor groups affected have been improved, and (3) what conclusions we may draw from a detailed and critical analysis of one state's experience in this field.

The method used is an examination of the administrative experience under the law in the case of the five industries in which minimum wage orders have been promulgated. A summary of a few pertinent provisions of the law itself and of the administrative procedure thereunder may be valuable at this point. The law states that no employer shall pay any woman or minor employed by him an unfair wage—a wage which is less than the fair and reasonable value of services rendered or less than sufficient to meet the minimum cost of living necessary for health. To determine this fair wage, all relevant circumstances affecting the fair value of services rendered, such considerations as would guide a court of law in determining proper payment for services, and the wages paid for like or comparable work by employers who voluntarily maintain fair wage standards may be taken into consideration.

The law provides that an investigation may be undertaken by the Department of Labor in any industry employing women and minors to determine whether the wages paid in such an industry are less than the fair value of services rendered. If, after such investigation, the Department is of the opinion that the wages paid are unfair within the meaning of the law, a wage board, composed of two representatives each of the employers and employees in the industry, and one representative of the public who acts as chairman, must be appointed to recommend fair wage standards for the industry concerned. The report of this body is submitted to the Director of Labor for acceptance or rejection, and, if accepted, must be submitted to public hearings at which any objections of either employers or employees are heard. After such hearings, the Director may issue a directory order, the punishment for violation of which, as provided by the law, is the publication of the names of the violators after due notice and hearing. After a period of nine months, if the Department is of the opinion that the continued non-observance of a directory order constitutes a threat to the maintenance of fair wage standerds in the industry, hearings may be held on the establishment of a mandatory order, and the wage order may be made mandatory. The punishment for the violation of a mandatory order is fine and/or imprisonment after due conviction by a court of law.

The law itself then describes the procedure involved in the promulgation of a directory or mandatory wage order, the penalties for non-observance, and the method of securing collection of wage claims by court action. However, only a very few cases of violation of the wage orders ever reach the court room, and consequently, we must mention the administrative procedure involved in the enforcement of a wage order. The first step in the enforcement of a wage order is the request for submission of a payroll transcript from all firms in the industry for a week following the effective date of the wage order. Subsequently, all establishments in the industry are inspected by a corps of trained inspectors.

When violations are found, the situation is handled in one of the following ways. If the inspector can secure compliance at the time of the first inspection, the employer signs a compliance sheet, and reinspection within a period of 60 days is scheduled. If the offense is a serious one (such as the nonpayment of a minimum wage to one or more employees), or if the inspector cannot secure compliance, the employer is requested to appear at the office of the Division, where his case is heard and compliance is again requested. If the violation consists of payment of less than the minimum fair wage established in a mandatory wage order for the industry, the amount of back wages due is computed and the employer is requested to pay this sum to the employee previously underpaid. Only as a last resort is court action used to secure the payment of back wages.

Wage orders (including three directory and two mandatory orders) have been established in five industries. The first industry to be investigated was the macaroni, spaghetti, and noodle industry in which a minimum wage of 35 cents an hour for a basic 40 hour week was established in 1934. The order was never made mandatory. An investigation of wages in laundry occupations was completed in 1935 and the wage board convened for the industry recommended minima of 28 cents an hour for Chicago and vicinity, 25 cents for northern Illinois, and 23 cents for southern Illinois (all for a basic 44 hour week). This wage order was made mandatory in 1937, shortly after the United States Supreme Court had upheld the constitutionality of the Washington State minimum wage law. Organization of the laundry employees and trade agreements concluded during 1937-38 made this order of little practical effect, however.

The third directory order was established in the beauty culture industry, with a minimum of $16.50 for a 45-48 hour week, an order made mandatory in 1938. A year later the wage board was reconvened to revise the mandatory order upon petition of a number of beauty shop owners, but it rejected the requests for reclassification of employees and lowering of minimum rates which had been made by the petitioners,

and revised only those sections of the mandatory order which dealt with payment for under- and over-time. After due investigation, directory order number four was promulgated in the wash dress industry in 1938, with a minimum of 37 cents an hour for a 40 hour week. An attempt to make the order mandatory in 1939 was unsuccessful, and the order remains in the directory stage. In the confectionery industry a minimum wage of 35 cents an hour for Chicago and 31.5 cents for the rest of the state was established in 1939. No attempt has been made to make this order mandatory. An investigation of the restaurant industry in 1939-40 resulted in the appointment of a wage board, but the report of this board was rejected by the Director of Labor, and the board itself was dissolved pending further investigation of wages in restaurant occupations.

Statistical data concerning the distribution of wages and hours are available for more than one period in three of the minimum wage industries—laundry, beauty culture, and wash dress—although in only one industry (beauty culture) can the effects of a mandatory order be studied. An analysis of changes in the wage and hour structure of the laundry industry reveals two general tendencies: first, a greater dispersion of wage rates and weekly earnings in the state as a whole, and secondly, an increasing disparity between changes taking place in Chicago and vicinity and those occurring in the rest of the state. In the latter region, where the minima were slightly below the previous median rates, the entire wage structure underwent a downward revision, while in Chicago and vicinity, where the minimum was considerably greater than the previous median, a general upard revision took place. Since the 1934 and 1935 wage studies were 15 months apart, however, it seems probable that the establishment of the minimum wage, if it had any effect at all, merely accentuated changes already in operation in the industry. In the beauty culture industry during the period from 1935 through 1939, three definite changes were taking place—first, increased concentration of weekly earnings, secondly, increase in the size of both median and modal earn-

ings through 1937, with a slight decrease in 1939, and finally, increase in the first quartile weekly earnings even in 1939. At least tentatively the increased concentration exhibited in the data and the increase in the first quartile earnings may be attributed to the minimum wage determination. The original wage study in the wash dress industry covered the fall of 1935, while the compliance study was made in May of 1938. The changes evident in both hourly and weekly earnings were a greatly increased dispersion, a diminution in the size of the median, and an increase in the size of the modal earnings. However, these changes may not be real changes at all, in the sense that an entirely different distribution of wages and hours might have been found in the intervening period.

We may now consider what have been the general accomplishments under the law, how closely the minimum wages and the administrative provisions of the wage orders have met general standards of effectiveness, whether the administrative procedure of the minimum wage authority has been designed to give maximum protection to the groups which the law was designed to cover, and finally whether the provisions of the law itself are the best possible from the point of view of effective operation and desirable results. First—the general accomplishments under the law. In a ten year period, only a little more than five percent of all the women and minors employed in gainful occupations in Illinois have been brought under minimum fair wage orders—and considerably less than this proportion have been brought under mandatory orders, since three of the orders have remained in the directory stage. Several of the most important industries employing women have been left entirely without regulation—retail trade, hotel occupations, cleaning and dyeing, and restaurant occupations. One reason for this situation is found in the completely inadequate appropriations which have been granted the Division for enforcement of the law, since the wage studies of the larger industries are very expensive (and could not be made until grants had been made by the WPA for this purpose). Secondly, the enforcement of

the orders by means of the necessary inspection staff is also very expensive, and orders not enforced are better not issued. Comparison with states which enacted their minimum wage laws at the same time as Illinois reveals the fact that only two of these states had fewer wage orders than Illinois, and in both of these cases all the wage orders were mandatory. Every state had more mandatory orders than Illinois, and most of them regulated more important industries from the point of view of the number of women employed.

The adequacy of the minima established in the wage orders must be evaluated on the basis of such criteria as their relation to the necessary cost of living of a single woman living alone, the number and percent of employees in the industries benefitted by the minimum wage orders, and a comparison of the Illinois results with those obtained in other states. The weekly minima established (based on the standard week established in each individual wage order) ranged from $10.12 (in the laundry industry in southern Illinois) to $16.50 (in the beauty culture industry). Comparison with estimates of the necessary cost of living of a single woman living alone (made by the Division, by the Chicago Relief Administration, and by the United Charities of Chicago—these estimates range from $17.94 to $19.08) reveals the fact that not one of these weekly minima approaches even the lowest of the estimates of the cost of living (if we exclude the minimum cost of subsistence, which is not intended to allow a maintenance standard of living, but is only enough to suffice for short periods of time). One of the minima is little more than half the estimate of the Chicago Relief Administration ($19.08). Comparison of the minima established in the wage orders for these industries in Illinois with those established in nine other states reveals the fact that four of these nine established higher minima than Illinois in beauty culture occupations, that every state but one had a higher minimum for laundry occupations, that only one state had a higher minimum for the wash dress industry, and that no state had a higher minimum than Illinois governing confectionery occupations.

However, regardless of the fact that the minima established were less than estimates of the necessary cost of living, the wage orders apparently benefitted a large proportion of the employees in each of the industries regulated. In the laundry industry, nearly two-thirds of the employees in Chicago, about 60 percent in the vicinity of Chicago, and slightly less than half in the rest of the state were benefitted by the wage orders. In the beauty culture industry, slightly less than two-thirds of the registered beauty culturists, over 90 percent of the manicurists, and about one-quarter of the managers were benefitted by the wage order. In the wash dress industry, over 70 percent of the workers benefitted, and in the confectionery industry, the proportion benefitted ranged from about one-quarter to slightly less than one-half, according to the region of the state.

The administrative regulations contained in the wage orders have generally approached those recommended by minimum wage administrators, except for the recommendation for payment of less than time and a half for overtime in two industries, and the establishment of differentials by region of the state in the laundry and confectionery industries. Generally the administrative regulations are simple—the more complicated ones, such as the regulation of booth-renting in the beauty culture industry, being absolutely necessary to safeguard the standards contained in the order. Only two of the orders have contained provisions for apprentices, the beauty culture and the wash dress orders, and in the former industry such a provision is perfectly justifiable, while in the latter the period of apprenticeship is very short. Payment of undertime at an hourly rate somewhat higher than the regular minimum hourly rate was provided for in the majority of orders. Payment of piece workers at the minimum hourly rate and payment of minors at the minimum rate are provided in all the orders.

A critical examination of the administrative procedure followed by the minimum wage authority in Illinois leads to the conclusion that the Division of Women's and Children's Employment of the Illinois Department of Labor has adopted

quite generally acceptable methods for selection and training of personnel, for enforcing wage orders, and for conducting its office procedure. However, the inspection staff, as well as the office and administrative and research staff, has generally been inadequate for appropriate and frequent inspection of the establishments in the industries governed by minimum wage orders. Furthermore, this inadequate staff is responsible for the enforcement of four other laws besides the minmum wage law—the home work, the eight-hour day, the six-day week, and the child labor laws. It seems advisable, if this type of minimum wage law is to be retained, that its enforcement be given to an agency with no other laws to enforce, since this type of law requires "active" enforcement (in order to bring the industries under the operation of the law at all), as against the "passive" enforcement required by the other laws, although one corps of inspectors may well serve to enforce all laws pertaining to the employment of women and children.

A high degree of success has been attained by the Division in collecting back wages due under the mandatory wage orders (and especially under the beauty culture order) without recourse to court action. Collection of the wage claims is usually made within a reasonable period, and quite often in from one to three months after the inspection has taken place, although in certain cases, where the amount due is large and the payment of it in a lump sum would cause a small shop or firm a considerable degree of hardship, time payments are allowed by the Division. However, the most common type of violation of wage orders is that called "technical" violations—violations not of the basic minimum wage rate contained in the order, but of the administrative provisions. These violations are nearly always settled by administrative action, although the law does contain penalties for violation. Except for the non-cooperation program of the macaroni industry during the last of 1935 and 1936, the Division encountered no program of concerted refusal of information, although individual firms have sometimes refused to open their records to the Divison during an industry

investigation, and have also neglected or refused to submit payroll transcripts upon request. The policy of the Division has been one of education rather than the use of force, with the attitude that most violations are a result of ignorance and negligence.

Two points may be considered in connection with the provisions of the law itself—the criteria contained for minimum wage determinations and the existence of the directory order. The emphasis of the law is upon the fair value of services rendered rather than the cost of living of the employees, and little reference is found in any of the earlier wage reports to cost of living. In the wash dress and confectionery wage board reports, references were made to the cost of living of the employee, but, even though the board recognized that its determination was not going to give the employee a maintenance standard of living, it regarded the establishment of such a wage as more than the industry could bear. The emphasis of the Division and of the wage boards in the early reports was upon the fair value of services rendered—an empty criterion. To give it some meaning, the Division has used the median wage, the prevailing (or modal) wage, and the dispersion (by which is meant the range and not the ordinary measures of dispersion). The presumption seems to be that, if wage rates for the same service vary greatly between firms, factors of "chance and caprice," rather than the fair value of the services rendered, have been governing the establishment of wages. Furthermore, if 50 percent of the employees in an industry receive more than a certain wage, the question is asked why the other 50 percent do not receive as high a wage—and the same assumption is made with regard to the prevailing wage.

The Division's attitude has been that the fair value of services rendered lies somewhere in the region of wages paid by the "fair-minded" employers who voluntarily maintain fair wage standards. Such a recommendation, however (utilization of the fair value of services rendered) may result in inordinately low minimum wage determinations, such as those which occurred in the laundry industry, where the con-

ditions of the industry at the time were probably taken into consideration to too great an extent, and the reverberations of this wage order were heard in every subsequent attempt to establish higher minima for other industries. Furthermore, this criterion his nothing to offer in the case of an industry in which the entire wage level is inordinately low.

Would a law which required the primary consideration of the "cost of living" of the employees establish a more definite standard than the indefinite "value of services rendered"—a law perhaps like the minimum wage laws that have been carried over from the earlier period of minimum wage legislation? It would probably not result in the immediate establishment of wages equal to the cost of living, but it would perhaps eliminate and avoid such exceedingly low determinations as took place in the laundry industry. This statement is not to be taken as favoring the immediate and widespread adoption of a minimum wage equal to the most liberal estimates of the cost of living, but it suggests the gradual upward revision of wage minima over a period of, say, five to eight years, until they are equal to the cost of living. Such a procedure, as is evidenced by the California experience, is likely to allow sufficient time for the education of employers to the benefits of minimum wage legislation, while not submitting the economic system to any suddden shocks. Furthermore, such a law would make possible the establishment of general industry wage boards, instead of individual industry wage boards, since the cost of living of the employees does not vary according to whether they are employed in beauty parlors or laundry establishments, except as certain positions which require the employee to meet the public necessitate a larger expenditure for personal upkeep than others.

The other provision of the minimum wage law concerns the directory period. The penalty contained in the law for violation of directory orders (publication of the names of offenders) has never been used by the Division, at first because of its doubt concerning the constitutionality in general, and later because of its belief that such penalties would be completely ineffective. Since the names of violators were never

published, it is impossible to decide whether or not this method would have been effective. In any case, the enforcement of directory orders has been impossible. A directory order is unfair to the employees, who are not paid the full minimum wage (since no collection of back wages can be made under a directory order), and it is also unfair to the "fair-minded" employers who attempt to comply with the wage order but see themselves undercut by "chisellers." A directory order results in lack of respect for the minimum wage law and for the Department of Labor on the part of both employers and employees. Therefore the law should be changed so that wage orders, once issued, will become mandatory automatically after a brief directory period of perhaps 60 to 90 days, without the interference of such compliance studies and public hearings as are necessary under the present law. If a wage order should be issued in the first place, it certainly should be made mandatory. This is not to say, of course, that studies of the changes in the wage and hour structure of industries are not necessary or advisable. Such studies should certainly be made, but neither the issuance of an order in the first place, nor its becoming mandatory, should be made to depend on such studies.

Naturally there must be assurance that the orders will be strictly enforced by the administrative agency. Since a sound administrative procedure has already been established, the requisites for proper and complete enforcement of a minimum wage law are first, changes in the law itself (to eliminate the directory period, to establish a living wage as the basis for minimum wage determinations, and to establish a general industry commission in the place of wage boards for particular industries, possibly accompanied by the setting of a fairly low minimum in the law itself), a sufficient appropriation for the work of the Division, and finally an energetic and determined Department of Labor, along with an organized and informed public opinion.

VITA

The writer was born in Portland, Oregon on September 16, 1918 and attended the public schools of that city, graduating from Jefferson High School in 1936. Upon graduation she obtained a scholarship to Whitman College in Walla Walla, Washington, which she subsequently attended. She received her A.B. degree from that institution in 1940, with a major in Greek and economics. She came to the University of Illinois on a graduate scholarship, and received her Master's degree in economics in 1941, with a thesis written on "The Paretian Theory of Demand and Consumption." For the past two years she has ben pursuing the necessary course of study leading to the doctorate, under fellowships granted by the University. She is a member of Phi Beta Kappa and Phi Kappa Phi.